IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2007

CORAM :

THE HON'BLE MR. JUSTICE S.TAMILVANAN

A.S.No.152 of 1996

1. M.Palani
2. G.Lakshmiammal .... Appellants/Defendants

vs.

R.Periasamy .... Respondent/Plaintiff

Appeal filed against the Judgment and Decree dated 14.09.1995 made in O.S.No.220 of 1992 on the file of the Sub Court, Ranipet.

For Appellants : Mr.G.Rangarajan
For Respondent : Mr.R.Mohan

JUDGMENT

Aggrieved by the Judgment and Decree, dated 14.09.1995 made in O.S.No.220 of 1992, on the file of the Sub Court, Ranipet, the defendants in the suit have preferred this appeal.

2. The brief facts of the case are as follows :

According to the respondent / plaintiff, on 01.01.1990, the appellants herein had borrowed a sum of Rs.25,000/- from the respondent for the purpose of purchasing a house property, executed the suit pronote, Ex.A.1 and promised to repay the same with 36% interest. Subsequently, the appellants again obtained a sum of Rs.7,000/- from the respondent on 04.02.1990 and executed the second pronote, Ex.A.2, agreeing to repay the said amount with 36% interest. As the appellants / defendants did not repay the said amount with interest, the respondent herein filed the suit before the trial court.

3. Considering the oral and documentary evidence and also the arguments advanced by both the learned counsel, the trial court decreed the suit with cost, directing the appellants / defendants to pay the amount with 18% interest from the date of filing of the suit till the date of decree and 6% after the decree. Aggrieved by which, this appeal has been preferred by the appellants / defendants.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. In the written statement filed by the first appellant and adopted by the second appellant, they have stated that the pronote, dated 01.01.1990, said to have been executed for a sum of Rs.25,000/- is a forged document. According to them, Ex.A.1, pronote was not executed by them. However, they admitted that the second pronote, Ex.A.2 was for a sum of Rs.7,000/- was executed by them and even for the said pronote, no amount was paid by the respondent.

5. The respondent / plaintiff, who was examined as P.W.1 before the trial court has stated in his evidence that on 01.01.1990, the appellants herein had obtained an amount of Rs.25,000/- by cash from him and executed the pronote, Ex.A.1 and subsequently, on 04.02.1990, again they obtained a sum of Rs.7,000/- and executed the second pronote, Ex.A.2 in the presence of witnesses, but they had not repaid the said amount with interest, hence, he filed the suit. In the cross-examination, he has stated that the suit amount was obtained by the appellants for the purpose of purchasing a house property. It is not in dispute that the second appellant is a teacher and also wife of the first appellant.

6. P.W.2 is one of the attestor to Ex.A.1 and Ex.A.2 . According to him, the appellants 1 and 2 had received a sum of Rs.25,000/- on 01.01.1990 and executed the pronote, Ex.A.1 in favour of the respondent and on 04.02.1990, the appellants againreceived a sum of Rs.7,000/- and executed pronote, Ex.A.2 in favour of the respondent in presence of himself and another witness. Exs.A.1 and A.2 pronotes were written by one Varadhan, who was also a teacher.

7. It is an admitted fact that P.W.2 is the maternal uncle of the respondent, as well as the second appellant and the first appellant is the husband of the second appellant. Though in the written statement, the appellants as defendants have denied the execution of Ex.A.1, pronote and also passing of consideration for both the pronotes. Even in the chief, the first appellant / D.W.1 has has admitted that in both the pronotes, he along with the second appellant had signed. The first appellant has also admitted that he along with the second appellant had received the consideration, but he has stated that no witness was present, while they were affixing their signatures in the pronotes. In the cross-examination, the first appellant has given a contradictory statement that the signature available in Ex.A.1 was not that of his signature. As per his evidence, in the cross-examination, the loan amount of Rs.25,000/- obtained by him was subsequently discharged by him and that the revenue stamp affixed therein was also teared by him.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. The second appellant as D.W.2 has also admitted in her evidence that she had obtained Rs.25,000/- along with her husband, the first appellant from the respondent herein. She has also admitted that she has signed in both the pronotes along with the first appellant. According to her, they have discharged the debts and also obtained receipt, but subsequently, the respondent got back the same from them. According to the second appellant, while she asked to return the second pronote, the respondent had assured for returning the same, but without returning the same, he filed the suit. The second appellant has admitted that she has studied up to S.S.L.C. and working as teacher in a primary school and that before signing the pronotes, she had also read the contents of the said documents.

9. Though, the appellants have admitted their signatures available in Ex.A.1 and Ex.A.2, pronotes and also receiving of consideration, their evidence, they had totally denied the execution and also passing of consideration for the same in their written statement. Further, in the cross-examination, at one point of time, the second appellant has disputed her admitted signature available in the court summon and also in Ex.A.2, pronote, though she had admitted the same in her chief examination.

10. As per Section 118 of Negotiable Instruments Act, 1981, when the execution of pronote is established, it has to be presumed that consideration has been passed on the person, who executed the same, until the contrary is proved. In other words, if execution is admitted, the burden is shifted on the defendant to prove that there was no consideration passed on the pronote. Here, in this case, though the appellants as defendants had totally denied the execution as well as the passing of consideration in their written statement, strangely, in their chief examination, they have admitted the fact that they had signed in the pronotes and also passing of consideration, but in the cross-examination they have given contradictory version with regard to the receiving of consideration and also pleaded discharge without any legally acceptable evidence.

11. The appellants have admitted that they have no enmity with the attestor, P.W.2 and the scribe. Admittedly, P.W.2 is the maternal uncle of the respondent and the second appellant. P.W.2, the attestor to Exs.A.1 and A2 has given a cogent evidence that the appellants after having received the consideration in the presence of himself and the other attestor, executed the suit pronotes, Exs.A.1 and A.2 on the dates specified therein. Further, the respondent has also produced the sale deed, under which the appellants had purchased the house property on 23.05.1990 for a sum of Rs.77,500/-.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

12. It has been admitted by the appellants in their chief, that they obtained loan from the respondent and executed two pronotes, Exs.A.1 and A.2, as they were in need of money for purchasing the house property. Ex.B.1, admittedly a scrapped pronote, dated 01.01.1990 for a sum of Rs.25,000/- has no evidentiary value to disprove Ex.A.1.

13. In the grounds of appeal, the appellants have averred that the non-examination of the second attesting witness would affect the case of the plaintiff is not a legal defence. Out of the two attestors to Exs.A.1 and A.2, one of the attestors has been examined as P.W.2. He is a close relative of both the appellants as well as the respondent. He has clearly spoken to about the execution and passing of consideration to the appellants 1 and 2 / defendants. Further, in the chief itself, the appellants have admitted the execution of the suit pronotes and also passing of consideration, though they have given a self contradictory version in their cross-examination.

14. In such circumstances, I could find that there is no error or infirmity in the Judgment and Decree of the court below in holding that the case of the respondent / plaintiff has been proved by oral and documentary evidence. Though the rate of interest has been stated at 36% per annum, in the pronotes, the trial court has fixed the same at 18% till the filing of the suit and 6% subsequent interest, which is also just and reasonable.

15. In the above circumstances, I hold that the appellants have not made out any case in their favour and hence, the appeal fails.

16. In the result, confirming the Judgment and Decree passed by the trial court, the appeal is dismissed. However, there is no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsvn

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

1.The Subordinate Judge, Ranipet.

2.The Section Officer, V.R.Section, High Court,
Madras-104.

A.S.No.152 of 1996

sky/5/1

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/